



## BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

### Advisory Opinion No. 06-05-006

The Ethics Law states that a quasi-judicial official must not solicit from a person within that official's jurisdiction an endorsement of a political candidate. A quasi-judicial official seeking elected office asks whether she can send out campaign literature in a mass mailing, which may include recipients within her jurisdiction, if that literature seeks only votes, and not an official endorsement. The Commission concludes that the quasi-judicial official can send out such a mass mailing, provided it does not seek an endorsement or a financial contribution.

Section 19A-16A(a) of the County Code (2004), as amended, limits the political activities of County quasi-judicial officials.<sup>1</sup> Among other things, a quasi-judicial official cannot solicit or accept from a person within that official's jurisdiction a financial contribution for any political candidate. The law also prohibits a quasi-judicial official from soliciting from a person within that official's jurisdiction an endorsement of or opposition to a political candidate. A person within a quasi-judicial official's "jurisdiction" includes an individual who owns or operates a business regulated by the official or who has a matter pending before the official's agency.

These limitations on political activities are largely designed to prevent a quasi-judicial official from coercing money or an endorsement, intentionally or otherwise, from a person within that official's jurisdiction. By observing these limitations, a quasi-judicial official can avoid an allegation that his or her participation in an agency matter is based upon anything other than the record compiled before that agency.

While it is tempting to permit the mass mailing envisioned here based upon the promise that it will not target persons within the quasi-judicial official's jurisdiction, the Ethics Law will not permit such a construction of § 19A-16. The legislature has clearly identified those situations where it has permitted a solicitation that will not target certain persons. *See, e.g.*, § 19A-16(b)(2) (a public employee may solicit a gift from any person to a charitable organization "if the employee does not solicit gifts primarily from those persons who do business with or are regulated by the county agency with which the public employee is affiliated, or from other employees who are supervised directly or indirectly by the public employee").

Nonetheless, the Commission concludes that this mass mailing is permissible, provided it does not seek an endorsement or a financial contribution. Section 19A-16A(a) does not prohibit a quasi-judicial official from merely seeking someone's vote. Rather, it prohibits the solicitation of a financial contribution or an endorsement. As noted above, the purpose of § 19A-16A is to preclude a quasi-judicial official from misusing the power of his or her office by coercing a person within that official's jurisdiction to take an

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<sup>1</sup> A bit of history surrounding this provision. State law (Md. Ann Code art. 13, § 13-103) and County law (County Charter § 405) provide that the County must not prohibit a County officer or employee from participating in politics. An amendment to Md. Ann. Code art. 24, § 13-104, authorized Montgomery County to limit the political activities of a County officer or employee who serves in a quasi-judicial capacity. (The catalyst for this entire process can be traced to *Advisory Opinion 97-01* (Jan. 22, 1997).) In 1998, County voters amended the Charter to allow the County to restrict the political activities of County officer or employee (including members of boards and commissions) who serve in a quasi-judicial capacity. In 2001, the County did just that, amending the ethics law to restrict the political activities of quasi-judicial officials by adding § 19A-16A.

action merely to appease that official. That purpose is served in the case of an endorsement or financial contribution solicited by a quasi-judicial official because it is soon apparent whether the person within the official's jurisdiction will accede to the official's request. But that logic breaks down in the case of a vote, because the official has no way of verifying that the person has in fact voted in accordance with the official's request.

A broader construction of § 19A-16A(a) might effectively preclude a quasi-judicial official from seeking elected office, at least where a large number of persons fall within that official's jurisdiction, and the Commission does not believe that to be the legislature's intent. *Cf.* § 19A-5(b)(2)(A) (expressly precluding members of the Ethics Commission from holding or seeking elected office). Some quasi-judicial agencies, such as the Board of Appeals or the Landlord-Tenant Commission, have a large and varied constituency, making it impossible for one of their board members to send out a mass mailing seeking support at the polls while ensuring that no one in their jurisdiction receives that mailing.

In reaching this decision the Commission has relied upon the facts as presented by the requestor.

FOR THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Richard N. Reback".

Richard N. Reback, Chair

August 30, 2006